(2008) 01 KL CK 0001

In the High Court Of Kerala

Case No : Writ Petition (C) No''s. 33183, 33174 of 2007 etc.

The Managing Director, KSRTC — APPELLANT

Vs

T. Padmavathy — RESPONDENT

Date of Decision : 07-01-2008

Acts Referred:
Kerala Lok Ayukta Act, 1999 — Section 8(1)

Citation : (2008) 1 ILR (Ker) 378 : (2008) 1 KLJ 337 : (2008) 1 KLT 584

Hon'ble Judges : P.N. Ravindran, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : K. Prabhakaran, SC, KSRTC, for the Appellant; G. Sudheer, for the Respondent

Final Decision : Allowed

Judgement

K. Balakrishnan Nair, J.—These Writ Petitions are filed by the KSRTC, feeling aggrieved by the orders of the Lok Ayukta, directing payment of terminal benefits to its employees, overlooking the priority list maintained by it. The petitioner points out that this Court issued an interim direction in CMP No. 604/01 in WA No. 289/01 on 18-10-2001, as to how the terminal benefits should be released to the retired employees of the KSRTC. The said order happened to be passed, as the KSRTC failed to pay the terminal benefits due to its retired employees in time. Several Writ Petitions happened to be filed before this Court, seeking directions against the KSRTC to pay terminal benefits without delay. In the above background, the above said interim order was passed. The Honourable Supreme Court also upheld the said interim order, as evident from Ext. P6 order. (The exhibits referred in this Judgment are those produced in Writ Petition (C) No. 33183/07). Later, making the said interim order absolute, Writ Appeal No. 289/01 was disposed of on 20-11-2002, as per Ext. P5 Judgment. The KSRTC submits, it is bound by the directions of this Court in Ext. P5 Judgment. When those directions are in force, the Lok Ayukta is entertaining petitions and issuing directions, which run counter to the aforementioned directions of this Court.

Therefore, these Writ Petitions have been filed, challenging those orders of the Lok Ayukta, ordering payment of terminal benefits, overlooking the priority list prepared, maintained and followed by the KSRTC, in the light of the directions of this Court mentioned above. When the Writ Petitions came up before the learned Single Judge, some of them were referred to the Division Bench to resolve the conflict between the decision of the learned Single Judge in Director, Economics and Statistics and Another Vs. Subramania Pillai and Others and the Judgment of this Court in Writ Petition (C) No. 19040/07, which is produced as Ext. P7. In the latter Judgment, the learned Single Judge held that the Lok Ayukta has no jurisdiction to entertain claims regarding terminal benefits of the employees of the KSRTC. But, in the former reported decision, the learned Single Judge has taken a different view. So, to resolve the conflict, the Writ Petitions happened to be referred to the Division Bench.

2. Going by the provision of S. 8(1) read with the second schedule to the Kerala Lok Ayukta Act, 1999, we feel that the decision in Director, Economics & Statistics''s case (supra) lays down the correct legal position. Section 8(1) of the Kerala Lok Ayukta Act reads as follows: Matters not subjected to investigation: (1) Except as hereinafter provided, the Lok Ayukta or an Upa-Lok Ayukta shall not conduct any investigation under this Act in the case of a complaint, involving a grievance in respect of any action if such action relates to any matter specified in the second schedule.

Clause (d) of the Second Schedule to the Act reads as follows:

Action taken in respect of appointment, removal, pay, discipline, superannuation or other matters relating to conditions of service of public servants, but not including actions relating to claims for pension, gratuity, provident fund or to any claims which arises on retirement, removal or termination of service.

When the above provisions are read together we have no doubt in our mind that the Lok Ayukta is competent to go into the claims regarding terminal benefits. This view finds support from the Division Bench decision of this Court in Dr. V.C. Kamalu and Others Vs. State of Kerala and Others, . In paragraph 22 of the said decision, the Division Bench has held as follows:

Item (d) in the above second schedule deals with the action taken in respect of appointment, removal, pay, discipline, superannuation or other matters relating to conditions of service of public servants which is outside the purview of the powers of the Lok Ayukta or an Upa-Lok Ayukta in view of the specific bar contained in Sub-s (1) of S. 8. What is permitted to be investigated is only the actions relating to claims for pension, gratuity, provident fund or to any claims which arise on retirement, removal or termination of service, which is not the case before us.

Therefore, we answer the point referred by the learned Single Judge by holding that the Lok Ayukta has jurisdiction to entertain matters relating to terminal benefits.

Now, the point to be considered is whether the direction issued by the Lok Ayukta to make payments, overlooking the priority list of pensioners should be sustained or not. The learned counsel appearing for the claimants would submit that their case deserve to be dealt with sympathy. They have no other source to marry off their daughters or to raise funds for their treatment. In some cases, widows have come forward, claiming the amounts due to their deceased husbands. We notice that in some cases, the claim may be genuine. But, such matters can be considered only by this Court and not by the Lok Ayukta. The directions issued by this Court on 18-01-2001 in CMP No. 604 of 2001 in WA No. 289/01, quoted in Ext. P5 judgment read as follows: 1. The Corporation would earmark 100% of the daily collection for disbursement of retirement benefits to its employees and the said amount would be kept in a separate Treasury account or otherwise bearing maximum interest and retirement benefit due be disbursed from that fund.

2. Corporation shall not divert hereafter any contribution made by the existing employees towards provident fund for any other purpose without getting orders from this Court.

3. Corporation would file a periodical statement before this Court every month stating the amount lying in the account on the basis of the above direction and the amount disbursed.

4. Corporation would keep a register of district-wise and also State-wise and the amount would be disbursed to the pensioners strictly on the basis of the State-wise register kept by them. After disbursing the amount every month, a statement would be filed before this Court.

5. The retirement benefits would be disbursed strictly on the basis of the date of retirement, unless otherwise ordered by the order of this Court.

6. A copy of this order shall be served on the Director of Treasuries. He shall ensure that no amount is drawn from the Account mentioned in direction (1) above, except for the purpose of disbursing pensionary claims. This Account shall not be subject to any attachment or treasury ban. The amount in PF Account shall be utilized only for satisfying PF claims of existing/retired employees.

(emphasis supplied)

In view of the above directions of this Court, the Lok Ayukta has no jurisdiction to entertain claims and order release of pensionary benefits in violation of the priority list of pensioners, prepared with reference to their date of retirement. Accordingly, the Writ Petitions are allowed and the impugned orders of the Lok Ayukta are set aside. But, this will not affect the rights, if any, of the claimants to approach this Court directly, seeking appropriate reliefs.